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DISTRICT OF NEVADA

BY _____ DEPUTY

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

-oOo-

United States of America,

Plaintiff,

vs.

VINAY BARARIA,

Defendant.

Case No.: 2:12-cr-0236-JAD-GWF

**PLEA AGREEMENT UNDER
FED. R. CRIM. P. 11 (c)(1)(A) and (B)**

Plaintiff United States of America, by and through DANIEL G. BOGDEN, United States Attorney, and SUSAN CUSHMAN and ROBERT KNIEF, Assistant United States Attorneys, the defendant VINAY BARARIA, and the defendant's attorneys, KATHLEEN BLISS and THOMAS A. MESEREAU, JR., submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A and B).

I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and VINAY BARARIA. This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other prosecuting, administrative, or regulatory authority, the United States Probation Office, or the Court.

1 The Plea Agreement sets forth the parties' agreement regarding criminal charges
2 referenced in the Plea Agreement and applicable sentences, fines, restitution and forfeiture. It
3 does not control or prohibit the United States or any agency or third party from seeking any
4 other civil or administrative remedies directly or indirectly against the defendant.

5 **II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS**

6 A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to
7 the following charge:

8 Count 2: Distribution a Controlled Substance, in violation of Title 21, United States
9 Code, Sections 841(a)(1), (b)(1)(C).

10 At the time of sentencing, the United States agrees to move to dismiss the remaining
11 counts of the indictment.

12 The defendant also agrees to the forfeiture of the property set forth in this Plea
13 Agreement.

14 B. Waiver of Trial Rights. The defendant acknowledges that he has been advised
15 and understands that by entering a plea of guilty he is waiving -- that is, giving up -- certain
16 rights guaranteed to all defendants by the laws and the Constitution of the United States.
17 Specifically, the defendant is giving up:

18 1. The right to proceed to trial by jury on all charges, or to a trial by a judge
19 if the defendant and the United States both agree;

20 2. The right to confront the witnesses against the defendant at such a trial,
21 and to cross-examine them;

22 3. The right to remain silent at such a trial, with assurance that his silence
23 could not be used against him in any way;

24 4. The right to testify in his own defense at such a trial if he so chooses;

1 5. The right to compel witnesses to appear at such a trial and testify in the
2 defendant's behalf; and

3 6. The right to have the assistance of an attorney at all stages of such
4 proceedings.

5 C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw his guilty
6 pleas after he has entered them in court.

7 D. Additional Charges. The United States agrees not to bring any additional
8 charges against the defendant arising out of the investigation in the District of Nevada which
9 culminated in this Plea Agreement and based on conduct known to the United States except that
10 the United States reserves the right to prosecute the defendant for any crime of violence as
11 defined by 18 U.S.C. § 16.

12 **III. ELEMENTS OF THE OFFENSES**

13 Count 2: The elements of Distribution a Controlled Substance, in violation of Title 21,
14 United States Code, Sections 841(a)(1), (b)(1)(C) are:

15 1. Defendant knowingly distributed hydrocodone; and

16 2. Defendant knew it was hydrocodone or some other prohibited drug.

17 *See Ninth Cir. Manual of Model Jury Instr., Criminal 9.18 (2010).*

18 **IV. FACTS SUPPORTING GUILTY PLEA**

19 A. The defendant will plead guilty because he is, in fact and under the law, guilty of
20 the crimes charged.

21 B. The defendant acknowledges that if he elected to go to trial instead of pleading
22 guilty, the United States could prove his guilt beyond a reasonable doubt and establish its right
23 to forfeit the specified property by preponderance of the evidence. The defendant further
24

1 acknowledges that his admissions and declarations of fact set forth below satisfy every element
2 of the charged offenses.

3 C. The defendant waives any potential future claim that the facts he admitted in this
4 Plea Agreement were insufficient to satisfy the elements of the charged offenses.

5 D. The defendant admits and declares under penalty of perjury that the facts set forth
6 below are true and correct: On July 20, 2011, BARARIA, knowing his conduct was unlawful,
7 sold 500 hydrocodone pills for \$1125 to a DEA undercover agent. The sale took place in the
8 parking lot of Centennial Hills Hospital.

9 All of the foregoing occurred in the State and Federal District of Nevada.

10 **V. COLLATERAL USE OF FACTUAL ADMISSIONS**

11 The facts set forth in Section IV of this Plea Agreement shall be admissible against the
12 defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the defendant
13 does not plead guilty or withdraws his guilty pleas, the facts set forth in Section IV of this Plea
14 Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting
15 any evidence, argument or representation offered by or on the defendant's behalf. The
16 defendant expressly waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410
17 regarding the use of the facts set forth in Section IV of this Plea Agreement.

18 **VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS**

19 A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges
20 that the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing
21 Guidelines") in determining the defendant's sentence, but that the Sentencing Guidelines are
22 advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to
23 the maximum term of imprisonment permitted by statute.

1 B. Offense Level Calculations. The parties have no stipulation as to the calculation
2 of the defendant's offense level under the Sentencing Guidelines. Each party is free to argue the
3 extent and the scope of the defendant's relevant conduct, including defendant's responsibility
4 for any conduct on his part for counts dismissed pursuant to this plea agreement, and as to what
5 the parties believe the appropriate guideline level should be, and present evidence to support
6 their recommendations.

7 C. Reduction of Offense Level for Acceptance of Responsibility. Under USSG
8 §3E1.1(a), the United States will recommend that the defendant receive a two-level downward
9 adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts
10 establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully
11 admit facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails
12 to truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d)
13 provides false or misleading information to the United States, the Court, Pretrial Services, or the
14 Probation Office; (e) denies involvement in the offense or provides conflicting statements
15 regarding his involvement or falsely denies or frivolously contests conduct relevant to the
16 offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime;
17 (h) fails to appear in court; or (i) violates the conditions of pretrial release.

18 Under USSG §3E1.1(b), the United States will move for an additional one-level
19 downward adjustment for acceptance of responsibility before sentencing because the defendant
20 communicated his decision to plead guilty in a timely manner that enabled the United States to
21 avoid preparing for trial and to efficiently allocate its resources.

22 D. Criminal History Category. The defendant acknowledges that the Court may
23 base his sentence in part on the defendant's criminal record or criminal history. The Court will
24 determine the defendant's Criminal History Category under the Sentencing Guidelines.

1 E. Relevant Conduct. The Court may consider any counts dismissed under this Plea
2 Agreement and all other relevant conduct, whether charged or uncharged, in determining the
3 applicable Sentencing Guidelines range and whether to depart from that range. Pursuant to
4 U.S.S.G. § 1B1.3, the United States will argue that 5630 oxycodone pills are attributable to the
5 defendant.

6 F. Additional Sentencing Information. The parties may provide additional
7 information to the United States Probation Office and the Court regarding the nature, scope, and
8 extent of the defendant's criminal conduct and any aggravating or mitigating facts or
9 circumstances. Good faith efforts to provide truthful information or to correct factual
10 misstatements shall not be grounds for the defendant to withdraw his guilty plea.

11 The defendant acknowledges that the United States Probation Office may calculate the
12 Sentencing Guidelines differently from what his attorney or the United States recommend and
13 may rely on additional information it obtains through its investigation. The defendant also
14 acknowledges that the Court may rely on this and other additional information as it calculates
15 the Sentencing Guidelines range and makes other sentencing determinations, and the Court's
16 reliance on such information shall not be grounds for the defendant to withdraw his guilty plea.

17 VII. APPLICATION OF SENTENCING STATUTES

18 A. Maximum Penalty. The maximum penalty for under 21 U.S.C. §§ 841(a),
19 (b)(1)(C) is twenty years imprisonment and a fine of \$1,000,000, or both. 21 U.S.C. §
20 841(b)(1)(C).

21 B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in
22 18 U.S.C. § 3553(a) in determining the defendant's sentence. However, the statutory maximum
23 sentence and any statutory minimum sentence limit the Court's discretion in determining the
24 defendant's sentence.

1 D. Parole Abolished. The defendant acknowledges that his prison sentence cannot
2 be shortened by early release on parole because parole has been abolished.

3 E. Supervised Release. In addition to imprisonment and a fine, the defendant will
4 be subject to a term of supervised release of at least three years. 21 U.S.C. 841(b)(1)(C).
5 Supervised release is a period of time after release from prison during which the defendant will
6 be subject to various restrictions and requirements. If the defendant violates any condition of
7 supervised release, the Court may order the defendant's return to prison for all or part of the
8 term of supervised release, which could result in the defendant serving a total term of
9 imprisonment equal to the statutory maximum prison sentence of life imprisonment.

10 F. Special Assessment. The defendant will pay a \$100.00 special assessment per
11 count of conviction at the time of sentencing.

12 **VIII. POSITIONS REGARDING SENTENCE**

13 The United States will recommend that the Court sentence the defendant within the
14 Sentencing Guidelines range determined by the Court unless the defendant commits any act that
15 could result in a loss of the downward adjustment for acceptance of responsibility. The
16 defendant may argue for any sentence below the Sentencing Guidelines' range based on the
17 factors set forth in § 3553(a). The defendant acknowledges that the Court does not have to
18 follow the recommendation of either party. The defendant also acknowledges that the Court
19 does not have to grant a downward departure based on the defendant's substantial assistance to
20 the United States, even if the United States chooses to file a motion pursuant to 18 U.S.C. §
21 3553(e)(1), USSG § 5K1.1, or Fed. R. Crim. P. 35. This Plea Agreement does not require the
22 United States to file any pre- or post-sentence downward departure motion under USSG §
23 5K1.1 or Fed. R. Crim. P. 35. Notwithstanding its agreement to recommend a guideline
24 sentence, the United States reserves its right to defend any lawfully imposed sentence on appeal

1 or in any post-conviction litigation. The United States agrees not to seek any sentencing
2 enhancements, but reserves the right to defend or support any sentencing enhancements which
3 are recommended by the United States Probation Department contained in the Presentence
4 Report.

5 **IX. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS**

6 Before or after sentencing, upon request by the Court, the United States, or the Probation
7 Office, the defendant will provide accurate and complete financial information, submit sworn
8 statements, and/or give depositions under oath concerning his assets and his ability to pay. The
9 defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and
10 will release funds and property under his control in order to pay any fine, forfeiture, or
11 restitution ordered by the Court.

12 **X. FORFEITURE**

13 1. The defendant knowingly and voluntarily:

14 A. Agrees to the abandonment, the civil administrative forfeiture, the civil
15 judicial forfeiture, or the criminal forfeiture of the following property:

16 a. \$49,054.00 in United States Currency;
17 b. 2007 Jaguar XK, Vin # SAJWA43B875B07357; and
18 c. an in personam criminal forfeiture money judgment of
19 \$40,225.00 in United States Currency ("property").

20 B. Abandons or forfeits the property to the United States;

21 C. Relinquishes all right, title, and interest in the property;

22 D. Waives his right to any abandonment proceedings, any civil administrative
23 forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture
24 proceedings of the property ("proceedings");

1 E. Waives service of process of any and all documents filed in this action or
2 any proceedings concerning the property arising from the facts and circumstances of this case;

3 F. Waives any further notice to his, his agents, or his attorney regarding the
4 abandonment or the forfeiture and disposition of the property;

5 G. Agrees not to file any claim, answer, petition, or other documents in any
6 proceedings concerning the property;

7 H. Waives the statute of limitations, the CAFRA requirements, Fed. R. Crim.
8 P. 7, 11, and 32.2, the constitutional requirements, and the constitutional due process
9 requirements of any proceedings concerning the property;

10 I. Waives his right to a jury trial on the forfeiture of the property;

11 J. Waives all constitutional, legal, and equitable defenses to the forfeiture or
12 abandonment of the property in any proceedings, including but not limited to (1) constitutional
13 or statutory double jeopardy defenses; and (2) defenses under the Excessive Fines or Cruel and
14 Unusual Punishments Clauses of the Eighth Amendment to the United States Constitution;

15 K. Agrees to the entry of an Order of Forfeiture of the property to the United
16 States;

17 L. Agrees that forfeiture is immediately due and payable and subject to
18 immediate collection by the United States;

19 M. Agrees and understands the abandonment, the civil administrative
20 forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the property shall not be
21 treated as satisfaction of any assessment, fine, restitution, cost of imprisonment, or any other
22 penalty the Court may impose upon the defendant in addition to the abandonment or the
23 forfeiture; and
24

1 N. The defendant acknowledges that the amount of the forfeiture may differ
2 from, and may be significantly greater than, the amount of restitution.

3 **XI. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS**

4 A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges
5 that:

6 (1) He has read this Plea Agreement and understands its terms and
7 conditions;

8 (2) He has had adequate time to discuss this case, the evidence, and this Plea
9 Agreement with his attorney;

10 (3) He has discussed the terms of this Plea Agreement with his attorney;

11 (4) The representations contained in this Plea Agreement are true and
12 correct, including the facts set forth in Section IV; and

13 (5) He was not under the influence of any alcohol, drug, or medicine that
14 would impair his ability to understand the Agreement when he considered signing this Plea
15 Agreement and when he signed it.

16 The defendant understands that he alone decides whether to plead guilty or go to trial,
17 and acknowledges that he has decided to enter his guilty plea knowing of the charges brought
18 against him, his possible defenses, and the benefits and possible detriments of proceeding to
19 trial. The defendant also acknowledges that he decided to plead guilty voluntarily and that no
20 one coerced or threatened him to enter into this Plea Agreement.

21 B. Waiver of Appeal and Post-Conviction Proceedings. The Defendant knowingly
22 and expressly waives: (a) the right to appeal any sentence imposed within or below the
23 applicable Sentencing Guideline range as determined by the Court; (b) the right to appeal the
24 manner in which the Court determined that sentence on the grounds set forth in 18 U.S.C. §

3742; and (c) the right to appeal any other aspect of the conviction or sentence and any order of restitution or forfeiture.

The defendant also knowingly and expressly waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel.

The defendant reserves only the right to appeal any portion of the sentence that is an upward departure from the Sentencing Guidelines range determined by the Court.

The defendant acknowledges that the United States is not obligated or required to preserve any evidence obtained in the investigation of this case.

C. Removal/Deportation Consequences: The defendant understands and acknowledges that if he is not a United States citizen, then it is highly probable that he will be permanently removed (deported) from the United States as a consequence of pleading guilty under the terms of this Plea Agreement. The defendant has also been advised if his conviction is for an offense described in 8 U.S.C. § 1101(a)(43), he will be deported and removed from the United States and will not be allowed to return to the United States at any time in the future. The defendant desires to plead guilty regardless of any immigration consequences that may result from his guilty plea, even if the consequence is automatic removal from the United States with no possibility of returning. The defendant acknowledges that he has specifically discussed these removal/deportation consequences with his attorney.


XII. ADDITIONAL ACKNOWLEDGMENTS

This Plea Agreement resulted from an arms-length negotiation in which both parties bargained for and received valuable benefits in exchange for valuable concessions. It constitutes the entire agreement negotiated and agreed to by the parties. No promises,

1 agreements or conditions other than those set forth in this agreement have been made or implied
2 by the defendant, the defendant's attorney, or the United States, and no additional promises,
3 agreements or conditions shall have any force or effect unless set forth in writing and signed by
4 all parties or confirmed on the record before the Court.

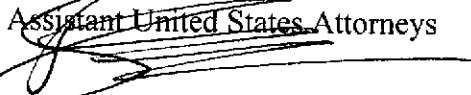
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6 DATE 12/18/13

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8 DATE 12.18.13



KATHLEEN BLISS
Counsel for the Defendant

9
10 DATE 12-18-13



THOMAS A. MESEREAU, JR.
Counsel for the Defendant

11
12 DATE 12/18/13



VINAY BARARIA, Defendant